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STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

3100 Port of Benton Blvd • Richland, WA 99352 • (509) 372-7950

October 3, 2005

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OCT 11 2005**EDMC**

Mr. Dan Opalski, Director
Office of Environmental Cleanup
United States Environmental Protection Agency
1200 Sixth Avenue, ECL-117
Seattle, Washington 98101

Dear Mr. Opalski:

Re: Concurrence with the 221-U Facility, Canyon Disposition Initiative (CDI), Record of Decision (ROD)

The Washington State Department of Ecology (State) has reviewed and concurs with the 221-U Facility, Canyon Disposition Initiative, Record of Decision (ROD). As noted in the ROD, Section 2.10.8, the State of Washington supports the selected remedy. Without affecting the State's support for the selected remedy, the State notes the following in providing its concurrence:

Part of the remedial decision involves invoking a process under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to waive certain "applicable or relevant and appropriate" requirements of Washington's Dangerous Waste Regulations, Washington Administrative Code (WAC) 173-303-665, that relate to dangerous waste landfill minimum technical requirements. These requirements are part of the State's authorized hazardous waste program under Subchapter III of the Solid Waste Disposal Act (Resource Conservation and Recovery Act). The State notes that CERCLA § 120, which sets forth the limits of a waiver of sovereign immunity under CERCLA, provides that "Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act...(including corrective action requirements)," 42 U.S.C. § 9620(i).

To the State's knowledge, no court has determined whether this language limits the ability under CERCLA to waive a requirement of the Solid Waste Disposal Act (as reflected in an authorized state program) at a federal facility.

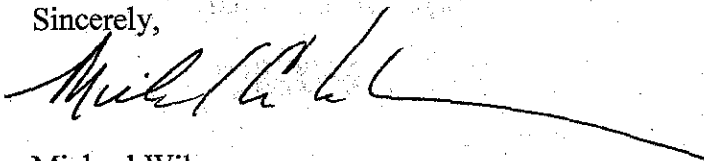
The State does not wish to test this issue in relation to the selected remedy. As indicated above, the State supports the selected remedy. This letter is to indicate that while the State supports the selected remedy, the State reserves all arguments in the future concerning the applicability of

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requirements of the Solid Waste Disposal Act (and corresponding state law) under CERCLA § 120, particularly at a federal facility that is a permitted hazardous waste treatment, storage or disposal facility.

If you have any questions, please feel free to contact Rick Bond at (509) 372-7885 or Ron Skinnarland at (509) 372-7924.

Sincerely,



Michael Wilson
Nuclear Waste Program Manager

fwb/pll

Cc: Craig Cameron, EPA
Nick Ceto, EPA
Kevin Leary, USDOE-RL
Keith Klein, USDOE-RL
Julie Robertson, FH
Stuart Harris, CTUIR
Gabriel Bohnne, NPT
Russell Jim, YN
Todd Martin, HAB
Ken Niles, ODOE
Administrative Record
Environmental Portal